**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES**

**In re patent application of**

TOM FLANAGAN

Application No.09/540,558 Group Art Unit: 2143

Filed: March 31, 2000 Examiner: Joseph E. Avellino

For: PROXY INTERNET BROWSING

**APPELLANT'S REPLY BRIEF ON APPEAL**

Honorable Commissioner for Patents
Alexandria, VA 22313-1450

Sir:

Appellants respectfully reply to the Examiner's Answer, filed October 5, 2004, to the above-listed application as follows:

## I. GROUPING OF CLAIMS

Applicant asserts that the claims stand or fall together. In Section (7) the Examiner did not agree with the Applicant's grouping of claims because "there is only one patentable invention described in the claims."

It is fundamental patent law that an inventor "may obtain a patent." 37 C.F.R. 101. Thus, only a single invention may be claimed in a patent application. Therefore, the reasons cited by the Examiner are simply requirements under the CFR for every patent application. Such a far-reaching requirement for separability

of claims is not found within 37 CFR 1.192(c)(8). Under the Examiner's theory, for claims to stand or fall separately the claims must cite to *individual and distinct* inventions within the same application. If this was a correct statement of the law, this would deny separability of claims on appeal for nearly every patent application.

Applicants have shown in their brief that the claims cite to a system and method that contains different elements that do not have the same scope or meaning.

## II. REPLY TO EXAMINER'S RESPONSE TO ARGUMENT

In Section (11), the Examiner responded to six points made by Applicants. For the reasons below, the Examiner's arguments should be rejected, and the Applicant's Application should be passed to issue.

### Point (1)

Although it may be a common practice in the USPTO, the case of citing new art in a Final Action *after* the Applicant overcomes the Examiner's art cited in the First Office Action is prejudicial. Applicant should have the chance to respond to new arguments by the Examiner via amendments to the claims, if necessary.

**Point (2)**

The Examiner has improperly combined the cited references of Mansbery and Reynolds. The Examiner simply recited parts of Reynold's disclosure with no explanation of where a motivation exists to combine or why one skilled in the art would think it advantageous to combine.

The Examiner asserted that combining Reynolds with Mansbery would allow testing of remote devices (Reynolds, col. 2, lines 41-44) having limited processing capabilities (Reynolds, col. 1, lines 28-29), such as consumer appliances and other types of electronic devices (Reynolds, col. 1, lines 14-15), thereby reducing the need of a service representative to the applicant (Reynolds, col. 7, lines 29-31) so that the appliance could be accessible on the Internet and not on Mansbery's "separate network, such as the CEBUS powerline network...." However, Reynold's already has its system running through the Internet (col. 3, lines 3-13) in order to remotely control Appliances (col. 7, lines 3-13) to perform tests on "electrical and electromechanical components of the appliance, i.e., motors, lights, and *any other operational aspect of the* appliance that can be controlled by the embedded system." (emphasis Applicant's).

Since the heart of Mansbery's disclosure is remote control of appliances through the Internet (see Mansbery, Fig. 2) using the CEBUS local home network and already controls the appliances (see Mansbery, Fig. 8, col. 9, lines 1-26) there

is no advantage to combine Reynolds with Mansbery. Clearly, the reasons for combining Reynolds given by the Examiner only re-produce the Architecture for Testing Pervasive Appliances disclosed by Reynolds. This is an improper reason to combine and should be withdrawn.

**Point (3)**

The Examiner used hindsight in the citation of separate elements from difference references to allege the claimed invention. The use of an IP address to access remote appliances or computers may or may not reduce processing and protocol translation. The Examiner's own cited art reinforces this point. Mansbery did not use IP addressing because this would have interfered with specific protocols for the local network protocols that follow the CEBUS subsystem protocols.

While the use of IP addressing for TCP network and Internet addressing may be known in a general sense of network protocols, it is not an obvious benefit to specific applications including the claimed invention.

**Point (4)**

The "appliance server" in Mansbery cannot be analogized to the claimed "Internet Server" for at least three reasons:

1. Earlier in the Examiner's Answer Brief, the Examiner admitted in the response to Point (2) that the Mansbery "appliance server" is "on a separate network" other than the Internet.

2.The "Appliance server 100" of Mansbery that is cited by the Examiner in Point (4) does not exist in the Mansbery reference as hardware, it is merely a software function that runs on the home computer for the disclosed system.

3. The Examiner's citation to Microsoft's computer dictionary of an "Internet Server" is simply an attempt to place this term into the Mansbery specification where it does not exist. Mansbery states clearly that the appliance server is on a "home computer," which is defined in the Microsoft dictionary as a computer for use in the home and not as an Internet Server.

**THE MANSBERY APPLIANCE SERVER IS "ON A SEPARATE NETWORK"**

The Examiner cannot have it both ways by arguing in Point (2) that the Mansbery CEBUS powerline network, which contains the "appliance server," is located "on a separate network" that is "not" on the Internet, and then argue later in Point (4) that the "appliance server" also exists as an "Internet server" on the Internet. Mansbery states that the "first software component [that] runs on the home computer" is called "Tonight's Menu Appliance Server Software 100," which contains the CEBUS Subsystem protocol 120. These are the separate

components of the "appliance server" that are correctly identified as existing "on a separate network" according to the Examiner in Point (2).

The Examiner's reference to the "Internet" label in Figure 2 of Mansbery is also misleading. Mansbery's Menu Browser 50 communicates to the Appliance Server software 100 through the Internet only. Mansbery discloses that the Appliance software receives information from the Internet. "The Tonight's Menu Appliance Server Software 100 receives information from the internet...." (col. 6, lines 21-23) The software 100 is not part of the Internet.

**MANSBERY'S APPLIANCE SERVER SOFTWARE RUNS ON A HOME COMPUTER**

Mansbery states that the "Tonight's Menu Appliance Server Software 100" is a component of that system that "runs on the home computer." (col. 6, lines 15-17). This home computer is not part of the Internet nor is an Internet Server. Further, the "home computer" is not labeled within the Figures of Mansbery. The Examiner cited to box 100 in Figure 2 of Mansbery shows a software component to that system labeled "Tonight's Menu Appliance Server." However, a careful review of the figure shows that this box is also labeled "Home Complex" in the lower right-hand corner. Also, Figure 8 labels the same component as the "Home Computer" as well as Figure 10. A careful reading of the specification clearly shows that the

"Appliance Server" is a software component of the home network and cannot possibly be an Internet Server. See col. 4, lines 51-53 ("The software on the home server that controls the home appliance is called the appliance server"), col. 5 lines 45-46 and lines 59-60.

The home computer of Mansbery is obviously connected to the Internet in order to receive commands from the remote Menu Browser 50. However, the Examiner's definition of an Internet Server would mean that every computer in the world that has any type of Internet connection, including for example an AOL dial-up home computer, instantly becomes an Internet server when it connects to the Internet which is an absurd construction of the term. The Board does not have to reach this argument, however, because Mansbery has already clearly defined that the "Appliance Server" is part of the "Home Computer."

Thus, the analogy of the claimed "Internet Server" to a software function of the local home computer in Mansbery is an improper and technically incorrect analogy.

**THE MICROSOFT COMPUTER DICTIONARY DEFINES "HOME COMPUTER"**

The Examiner's improperly cited to Microsoft's computer dictionary for an "Internet Server." Since the term is not used in Mansbery, this is an improper and prejudicial attempt to insert the definition into the specification of Mansbery.

The Examiner has avoided discussing the "home computer" that is actually the computer running the Appliance Server software 100 in Mansbery's system. The proper definition for home computer in col. 6, lines 15-16 of Mansbery is found on page 255 of the Microsoft Dictionary, which states "A personal computer designed and priced for use in the home." This is clearly not the "Internet Server" asserted by the Examiner. For the Board's convenience, the cited pages from the Microsoft Dictionary are enclosed with this Reply.

**Point (5)**

Mansbery's disclosure clearly states that the client software communicates with the appliances using the CEBUS subsystem as merely a protocol translator. The Examiner's assertion that Figure 9 of Mansbery shows otherwise is misplaced. The Examiner is using one component of Mansbery out of context as a conclusory assertion. Figure 9 merely shows programming of the CEBUS subsystem, not how the protocol translation for the CEBUS works. Mansbery clearly states that

> ...a user on a remote computer running the Tonight's Menu Client Software 50 connected through the Internet through the CORBA appliance objects 110 to the Tonight's Menu Appliance Server Software 100 can communicate and operate home appliances 200. (col. 6, lines 37-41)

Figure 10 and the Mansbery specification in column 10, lines 9-40

describe how a display screen for a remote appliance 200 is shown at a remote user's location for control of the appliance. The CEBUS protocol (within the "appliance server" software 100) is merely a protocol translation for data packets back and forth between the appliance and user's client software.

**Point (6)**

Once again, the Examiner has cited to Figure 9 of Mansbery out of context with the rest of the disclosure. Figure 9 is a programming flowchart for the system that is sub-servient to the overall operation of the Mansbery system described in Figure 8. Figure 8 shows the similar operations to Figure 9 but in a generic sense. The "Return Error" cited by the Examiner in Figure 9 is shown as box 870 in Figure 8. However, the Examiner overlooked Box 890 in Figure 8, which is not recited in the text of the specification. This box clearly shows that there is a "Return Success to Client" notification that is sent back to the client once a program executes on a physical device (shown in box 880).

Thus, once a download has executed, a successful execution notification 890 is sent back to the client from the Tonight's Menu Appliance Server on the Home Computer indicating that the download is

executed. Therefore, the Examiner's assertion that no response is sent back to the client after a download has executed is without merit.

## CONCLUSION

In view of the foregoing, Appellant submits that the Examiner's rejections should be withdrawn and that all the claims presently pending in the application, are patentably distinct form the prior art of record and in condition for allowance. Thus, the Board is respectfully requested to withdraw the rejections and pass the present Application to issue.

Please charge any deficiencies and/or credit any overpayments necessary to enter this paper to Client's Deposit Account number 20-0668.

Respectfully Submitted,

Date: 1-5-05

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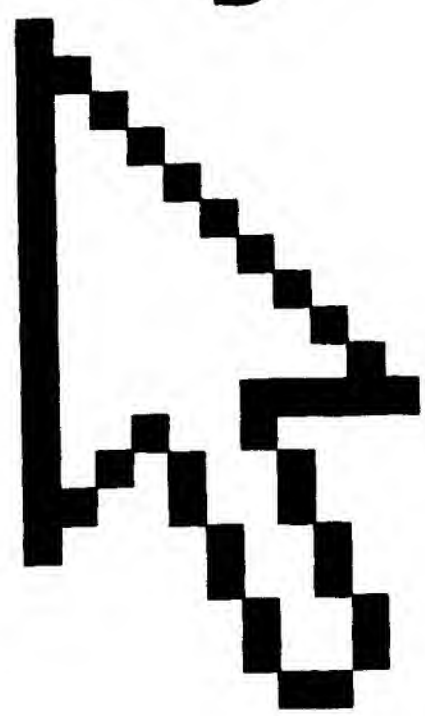
# Computer Dictionary

## Fifth Edition



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**hologram** *n.* A three-dimensional image record created by holography. The hologram consists of a light interference pattern preserved in a medium such as photographic film. When suitably illuminated, it produces an image that changes its appearance as the viewer changes viewing angle. *See also* holography.

**holography** *n.* A method of reproducing three-dimensional visual images by recording light interference patterns on a medium such as photographic film, creating a hologram. *See also* hologram.

**holy war** *n.* **1.** A widespread and acrimonious debate among computer professionals over some aspect of the computer field, such as the debate over use of the GOTO statement in programming or that over big-endian versus little-endian data storage. **2.** An argument in a mailing list, newsgroup, or other forum over some emotional and controversial topic, such as abortion or Northern Ireland. Introducing a holy war that is off the purported topic of the forum is considered a violation of netiquette.

**home** *n.* A beginning position, such as the upper left corner of a character-based display, the left end of a line of text, cell A1 of a spreadsheet, or the top of a document.

**home automation** *n.* The process of programmatically controlling appliances, lighting, heating and cooling systems, and other devices in a home network. *See also* home network (definition 1).

**homebrew** *n.* Hardware or software developed by an individual at home or by a company for its own use rather than as a commercial product, such as hardware developed by electronics hobbyists when microcomputers first appeared in the 1970s.

**home computer** *n.* A personal computer designed and priced for use in the home.

**home controller** *n.* A software or hardware interface used to control the systems in a home network for home automation.

**home directory** *n.* A directory associated with a user account under UNIX. The home directory is the current directory when the user first logs in, and the user can return to it by entering the command *cd* (change directory) without a pathname. The user's files will ordinarily be stored in the home directory and its descendants.

**homegrown software** *n.* Software developed by an individual at home rather than in a professional environment. Most public-domain and shareware programs are created this way.

**Home key** *n.* A key, found on most keyboards, whose function usually involves sending the cursor to some type of home position in an application. *See also* home.

**home network** *n.* **1.** A communications network in a home or building used for home automation. Home networks can use wiring (existing or new) or wireless connections. *See also* home automation, home controller. **2.** Two or more computers in a home that are interconnected to form a local area network (LAN).

**home office** *n.* **1.** An office set up within a residence. **2.** The main headquarters of a company.

**home page** *n.* **1.** A document intended to serve as a starting point in a hypertext system, especially the World Wide Web. A home page is called a *start page* in Microsoft Internet Explorer. **2.** An entry page for a set of Web pages and other files in a Web site. **3.** A personal Web page, usually for an individual.

**Home Phoneline Networking Alliance** *n. See* HomePNA.

**HomePNA** *n.* Short for **Home** Phoneline Networking Alliance. An association of more than 100 companies working toward the adoption of a unified technology for setting up home networks over existing telephone wiring. Phoneline networking allows multiple PCs, printers, and peripheral devices to be connected for such purposes as multiplayer gaming, sharing printers and other peripherals, and rapid downloads over the Internet. The alliance was founded by a number of companies including IBM, Intel, AT&T, and Lucent Technologies.

**Home Radio Frequency** *n. See* HomeRF.

**home record** *n. See* header record.

**HomeRF** *n.* Acronym for **Home** Radio Frequency. A wireless home-networking specification that uses the 2.4-GHz frequency band to communicate between computers, peripherals, cordless phones, and other devices. HomeRF is supported by Siemens, Compaq, Motorola, National Semiconductor, Proxim, and other companies.

**homogeneous environment** *n.* A computing milieu, usually within an organization, in which only one manufacturer's hardware and one manufacturer's software are used. *Compare* heterogeneous environment.

**serial port adapter** *n.* An interface card or device that either provides a serial port or converts a serial port to another use. *See also* adapter, serial port.

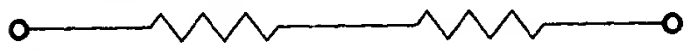
**serial printer** *n.* A printer connected to the computer via a serial interface (commonly RS-232-C or compatible). Connectors for this type of printer vary widely, which is one reason they are less popular than parallel printers among those who use IBM and IBM-compatible PCs. Serial printers are standard for Apple computers. *See also* DB connector, serial, serial transmission. *Compare* parallel printer.

**serial processing** *n. See* sequential processing (definition 2).

**Serial Storage Architecture** *n. See* SSA.

**serial transmission** *n.* The transfer of discrete signals one after another. In communications and data transfer, serial transmission involves sending information over a single line one bit at a time, as in modem-to-modem connections. *Compare* parallel transmission.

**series circuit** *n.* A circuit in which two or more components are linked in series. All the current passes through each component in a series circuit, but the voltage is divided among the components. See the illustration. *Compare* parallel circuit.



***Series circuit.***

**serif**[1] *adj.* Marked by the use of serifs. For example, Goudy is a serif typeface, whereas Helvetica is a sans serif typeface. See the illustration. *See also* serif[2]. *Compare* sans serif.

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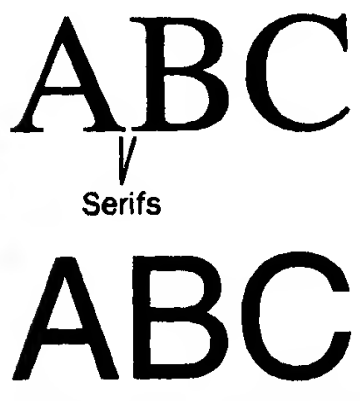


***Serif.*** *A serif typeface (top) and a sans serif typeface (bottom).*

**serif**[2] *n.* Any of the short lines or ornaments at the ends of the strokes that form a typeface character.

**server** *n.* **1.** On a local area network (LAN), a computer running administrative software that controls access to the network and its resources, such as printers and disk drives, and provides resources to computers functioning as workstations on the network. **2.** On the Internet or other network, a computer or program that responds to commands from a client. For example, a file server may contain an archive of data or program files; when a client submits a request for a file, the server transfers a copy of the file to the client. *See also* application server (definitions 1 and 2), client/server architecture. *Compare* client (definition 3).

**server appliance** *n.* A device designed to deliver one or more specific network services in a single turnkey package that includes both hardware and software. All necessary programs are preinstalled on a server appliance, which has minimal, simplified options and controls. Server appliances can be used to complement or replace traditional servers on a network and can provide such services as file and printer sharing and Internet connectivity. *Also called:* appliance. *See also* information appliance.

**server-based application** *n.* A program that is shared over a network. The program is stored on the network server and can be used at more than one client machine at a time.

**server cluster** *n.* A group of independent computer systems, known as nodes, working together as a single system to ensure that mission-critical applications and resources remain available to clients. A server cluster is the type of cluster that Cluster service implements. *See also* cluster.

**server control** *n. See* ASP.NET server control.

**server error** *n.* A failure to complete a request for information through HTTP that results from an error at the server rather than an error by the client or the user. Server errors are indicated by HTTP status codes beginning with 5. *See also* HTTP, HTTP status codes.

**server farm** *n.* A centralized grouping of network servers maintained by an enterprise or, often, an Internet service provider (ISP). A server farm provides a network with load balancing, scalability, and fault tolerance. Individual servers may be connected in such a way that they appear to represent a single resource.

**serverlet** *n. See* servlet.

**Server Message Block** *n. See* SMB.